IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 9390 of 2007
With
SPECIAL CIVIL APPLICATION No. 9480 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE M.S.SHAH
and
HONOURABLE MR.JUSTICE H.B.ANTANI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BALKRISHNA M. PATEL PRESIDENT - DABHOI CITY - Petitioner(s)
Versus
STATE OF GUJARAT THRO' THE SECRETARY & 55 - Respondent(s)

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Appearance :
MRS SANGEETA N PAHWA for Petitioner(s) : 1,
MR SUNIT SHAH, GOVERNMENT PLEADER for Respondent(s) : 1,
DS AFF.NOT FILED (N) for Respondent(s) : 1 - 2,4 - 5, 55,
NOTICE SERVED BY DS for Respondent(s) : 3,6 - 17,20 - 30,32 - 35,39 - 40,43 - 45, 49, 54,
MR PRAKASH K JANI for Respondent(s) : 6 - 34,36 - 54.
- for Respondent(s) : 0.0.0
- for Respondent(s) : 0.0.0

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CORAM : HONOURABLE MR.JUSTICE M.S.SHAH
and
HONOURABLE MR.JUSTICE H.B.ANTANI

Date : 14/06/2007
COMMON CAV JUDGMENT

(Per : HONOURABLE MR.JUSTICE M.S.SHAH)

Both these petitions raised common questions of law and facts and, therefore, with the consent of the learned counsel for the

parties, they were heard together and were disposed of by common order dated 4.5.2007 for the reasons to be recorded later on. Here are the reasons.

2. While Special Civil Application No.9480 of 2007 filed by 46 persons challenged their exclusion from the final list of voters in the constituency of traders holding general licenses for elections to Agricultural Produce Market committee, Dabhoi, District Baroda ("APMC" for short), Special Civil Application No.9390 of 2007 prayed for a direction to the Election Officer to delete 54 more persons from the said final list of voters published on 22.3.2007.

3. The facts giving rise to these petitions, briefly stated, were as under:-

3.1 The election program for APMC Dabhoi was declared on 31.1.2007 and the election schedule was notified as under:-

1	The date of declaration of election	31.1.2007
2	Authorised Officer and The Election Officer to issue instructions to APMC for submitting the voters' list	7.2.2007
2A	The date for the APMC to send the voters' list to the Election Officer (Rule 7(1))	7.2.2007
3	Publication of preliminary voters' list, to be made within seven days from the date of receipt of the voters list from APMC	14.2.2007
4	The last date for submitting objections against addition/deletion of the names in the voters' list (Rule 8(1)) within 14 days from the date of publication	28.2.2007
4A	Publication of the revised preliminary voters list with the notice inviting objections against such revised list	9.3.2007
4B	The last date for submitting objections/ amendments to the revised preliminary voters' list (Rule 8(1)(a))	16.3.2007

5	Publication of final voters' list	22.3.2007
6	The date for final nomination forms (Rule 2(2))	23.4.2007
7	Publication of the nomination forms (Rule 14)	23.4.2007
8	Scrutiny of nomination forms (Rule 15)	24.4.2007
9	The date of withdrawing nomination forms (Rule 17(1))	27.4.2007
10	Publication of the final voters list	27.4.2007
11	Date of polling	5.5.2007
12	Date of counting	6.5.2007
13	Declaration of the election results (Rule 21) immediately upon completion of counting	

Sd/-

Director, Agricultural Marketing & Rural Finance
Gujarat State, Ahmedabad

3.2 On 31.1.2007 while forwarding the election program for elections to APMC, Dabhoi, the Deputy Director and Agricultural Marketing Rural Finance and District Registrar of Cooperative Societies, Baroda called upon the APMC Dabhoi to forward the list of voters for three different constituencies as provided in Section 11 of the APMC Act, 1963. For the traders' constituency, the following instructions were issued:-

> “the APMC shall provide the names and residential addresses of traders holding general licenses of APMC Dabhoi. The list of voters shall contain the names of those traders who were issued licenses prior to the date of publication of the elections in the newspapers. The traders holding general licenses may be individuals, partnership firms, proprietary firm, companies and cooperative societies, the names of representatives authorised to vote at the elections shall be obtained by the

APMC. For sending the list of traders holding general licenses for the traders constituency, the instructions contained in Circular NO.1/01/226 ... dated 28.09.1995 of the Director of Agricultural Marketing and Rural Finance, Gujarat State, Gandhinagar shall be scrupulously followed by the APMC and a certificate to that effect shall be submitted to this office. The list of voters so prepared shall be sent so as to reach this office by 7.2.2007 without fail. The detailed election program has been published and it is enclosed with this letter."

3.3 As per the affidavit filed by the Authorised Officer and Cooperation Officer (Marketing) in the office of the District Registrar, Cooperative Societies, Baroda, after the elections were declared on 16.1.2007, the APMC Dabhoi sent the list of 195 traders holding general licenses. The list of preliminary voters was published on 14.2.2007, inviting objections within 14 days. On 26.2.2007, Bal Krishna Patel – petitioner in Special Civil Application No.9397 of 2007 lodged objections against inclusion of 144 persons in the preliminary voters' list. The Election Officer issued notices requiring all of them to remain present on 7.3.2007 with documentary proof to show that they were traders.

After considering the documentary evidence produced by the concerned persons, the Election Officer deleted from the preliminary list of voters the names of 42 persons who had not produced the documentary evidence in support of their case that they were traders. Accordingly, on 9.3.2007 the revised preliminary list with 153 voters was published. Against the said revised list also petitioner- Bal Krishna Patel raised objections on 13.3.2007 objecting against 102 persons on the ground that they were not genuine traders. The Election Officer issued notice to all of them and requested them to remain present with the proof of identity and documentary evidence to show that they were traders. The

authorities also inquired whether the voters were related to the Board of Directors who had issued licenses to them and also inquired as to how many voters were new and how many were already granted licenses earlier and how much market cess was paid by them. After this inquiry, the Election Officer passed order dated 22.3.2007 deleting 46 voters from the revised preliminary voters' list and published final voters' list containing names of 107 persons.

3.4 These petitions are directed against the order dated 22.3.2007 of the Authorised Officer and Co-operation Officer (Marketing) in the Office of the District Registrar, Co-operative Societies, Baroda, publishing final voters' list for the constituency of traders holding general elections for the elections to APMC, Dabhoi.

4. There is no dispute about these broad facts. The Director, Agricultural Marketing and Rural Finance, issued order dated 16.1.2007 under Rule 4 of the APMC Rules containing the program for elections to APMC, Dabhoi. A preliminary list of voters came to be published, including separate list of voters for the constituency of traders holding general licenses under sub-clause (ii) of sub-section (1) of Section 11 of the APMC Act. Objections were lodged by one Balkrishna M Patel (petitioner in SCA No. 9390 of 2007) objecting to inclusion of 144 names in the preliminary list of voters. Many of the persons against whom such objections were lodged, submitted their response. The Election Officer issued a revised list of voters on 9.3.2007, deleting 42 names from the preliminary list of voters. While publishing the revised list of voters on 9.3.2007, the Election Officer also invited objections against any new names added in the revised list of voters. Balkrishna M Patel again submitted objections to 102 names in the voters' list for the constituency of traders holding general elections. The petitioners

in SCA No. 9480 of 2007, 46 in number, submitted their representations to the Election Officer not to delete their names from the list of voters. Ultimately by the impugned order dated 22.3.2007, the Election Officer published the final list of voters deleting names of 46 voters.

5. Special Civil Application No. 9480 of 2007 is filed by those 46 persons contending that their names were already included in the preliminary list of voters published on 14.2.2007 and also in the revised list of voters published on 9.3.2007, but their names came to be deleted when the Election Officer published the final list of voters on 22.3.2007. Their main contention is that under the scheme of the Election Rules, once a person's name is included in the preliminary list of voters as well as in the revised list of voters, no objections can be considered thereafter and that their names cannot be deleted while publishing the final list of voters. It is submitted that the objections against the revised list of voters can be entertained only in respect of those persons whose names were not included in the preliminary list of voters, but were subsequently added in the revised list of voters. Strong reliance is placed on the decisions of this Court in 1996 (2) GLR 165 and 1998 (1) GLH 95.

6. On the other hand, Mr Pahwa, learned counsel for the petitioner in Special Civil Application No. 9390 of 2007, at whose instance the names of 46 petitioners in SCA No. 9480 of 2007 were deleted while publishing the final list of voters on 22.3.2007, has not only supported the decision of the Election Officer, but has also gone further in contending that the names of some more license holders were also required to be deleted from the final list of voters. Mr Pahwa also submitted that when the licenses are granted on the eve of elections, such license holders cannot be permitted to participate in the election process, otherwise it would

result into artificial majority being created.

7. Mr Bharat Patel, learned counsel appearing for the APMC, Dabhoi has supported the order of the Election Officer and also relied on the decision of the Full Bench in Daheda Group Seva Sahakari Mandali Ltd., 2006 (1) GCD 211 in support of the contention that the writ petitions are barred and that the remedy of any aggrieved party is only to move the Election Tribunal under Rule 28 of the APMC Rules after the elections are held and results are declared.

8. Mr Sunit Shah, learned Government Pleader for the State Government, Director and Election Officer supported the order of the Election Officer and submitted that in view of the objections raised against the inclusion of a large number of persons in the preliminary and revised list of voters, it was open tot he Election Officer to hold factual inquiry whether a person was really carrying on trade and whether he was paying the market cess fee. It was also submitted that it was open to the Election Officer to make such inquiries notwithstanding the grant of license by the APMC and that the Election Officer had no objection to any independent authority examining the objections against the names included or not included in the final list of voters.

9. Most of the controversies raised in these petitions were also raised in two other petitions being Special Civil Application Nos. 6482 and 8968 of 2007 in connection with the elections to APMC, Kalavad, District Jamnagar. In those petitions, the State authorities including the concerned Election Officer were represented by Mr Mihir Joshi, learned Addl. Advocate General who had contended that the Election Officer or the Election Tribunal cannot go beyond the legality or otherwise of the general licenses for the traders and that a separate machinery is provided for adjudicating the disputes

relating to grant, renewal, refusal, cancellation or suspension of general licenses being issued to traders under Section 27 of the APMC Act read with Rules 56 of the APMC Rules. In those petitions also, the controversy was about the power of the APMC or its Licensing Sub-Committee to issue general licenses to traders on the eve of elections and whether such licensees can be permitted to participate in the elections to the Market Committee. After considering a number of decisions of the Apex Court and also of the Full Bench of this Court in Daheda Group Seva Sahakari Mandali Ltd., 2006 (1) GCD 211, this Court has held that when a large number of licenses are issued after declaration of the date of elections to the concerned APMC, such action of APMC may amount to a fraud on the election process because creating artificial majority after declaration of the date of election may have an effect of subverting the fair election process and, therefore, by the judgment dated 11.5.2007 this Court dealt with all the contentions raised in the context of the above controversy. For the reasons indicated in the said judgment, we are of the view that the persons who were granted general licenses on or after 16.1.2007 cannot be permitted to participate in the elections to the APMC for the constituency of traders holding general licenses under clause (ii) of sub-section (1) of Section 11 of the APMC Act, 1953.

10. Special Civil Application No. 9390 of 2007 is accordingly required to be partly allowed to the extent of directing exclusion of those persons from the final list of voters published on 23.3.2007 who were granted licenses after declaration of the date of elections to APMC, Dabhoi on 16.1.2007. The number of such persons required to be excluded from the list of voters on this ground is stated to be six. However, it is for the Election Officer to verify the facts.

11. However, no such direction can be given against persons who were granted general licenses for traders' constituency prior to

declaration of the date of election to the concerned APMC merely on the ground that the licenses were granted on the eve of elections or on the ground that the licenses were granted to the relatives of the members of the APMC or on the ground that the market cess fee was not paid by any such person.

About forty petitioners in Special Civil Application No. 9480 of 2007 are stated to be persons who were granted licenses prior to 16.1.2007 and, therefore, the Election Officer could not have excluded their names from the list of voters only on the ground that they were issued licenses on the eve of elections. We have discussed this aspect at some length in paragraphs 12 to 18 and 22 to 24 of the judgment dated 11.5.2007 in Special Civil Application Nos. 6482 and 8968 of 2007. The question about non payment of market cess fee by the license holders has also been dealt with in the above judgment. Similarly, those who were issued licenses prior to 16.1.2007 could not have been excluded from the list of voters on the ground that they were relatives of the outgoing members or office bearers of the APMC, Dabhoi.

12. Another contention raised by Mr PK Jani, learned counsel for the petitioners in SCA No. 9480 of 2007 was that once a person's name is included in the preliminary voters list and again in the revised list of voters, no further objections can be entertained for the purpose of getting his name deleted from the final list of voters. Rule 8 of the APMC Rules, 1965 having a bearing on the controversy reads as under :-

> “8. Provisional and final publication of list of voters :- (1) As soon as a list of voters is prepared under Rule 5, it shall be published by the authorised officer by affixing a copy thereof at the office of the market committee and at some conspicuous place in the principal market yard in the market area along with a notice stating that any person whose name is not entered in the list of voters and who claims that his name should be entered therein or any person who thinks that

the name or the name of some other person has been wrongly entered therein or has not been correctly entered, may, within fourteen days from the date of the publication of the notice, apply to the authorised officer for an amendment of the list of voters.

(1-A) After receiving applications, if any, under sub-rule (1) a revised draft list of voters shall be published by the authorised officer by affixing a copy thereof on the notice board of agricultural produce market committee and at some conspicuous place in the principal market yard of the market area, alongwith a notice stating that any person who wishes to raise any objection against any new name entered in this list, may apply within seven days from the date of publication of this notice to the authorised officer for amendment in the revised draft list of voters.

(2) If any application is received under sub-rule (1-A), the authorised officer shall decide the same and shall cause to be prepared and published the final list of voters, after making such amendments therein as may be necessary in pursuance of the decision given by him on the application. The final list shall be prepared at least thirty days before the date fixed for the nomination of candidates for the election."

[emphasis supplied]

13. The above Rule has been interpreted by this Court in the two decisions – Chaudhari Rameshbhai Dalsangbhai vs. Director, AMRF, 1996 (2) GLR 165 and Prahladbhai Shivram Patel vs. Director, AMRF, 1998 (1) GLR 95. In the said decisions, it has been held that sub-rule (1A) of Rule 8 of the APMC Rules permits objections to be lodged only against addition of a new name in the revised list and that if a person's name had already figured in the preliminary list of voters and thereafter also continued in the revised list of voters, no objections can be considered against such a person because after publication of the revised list of voters, objections can be considered only against addition of a new name in the revised list of voters.

Since the aforesaid decisions have carefully interpreted the relevant provisions of the Election Rules, we have no hesitation in

accepting the contention of Mr Jani that the Election Officer could not have entertained objections against those petitioners whose names were already included in the preliminary list of voters as well as in the revised list of voters. This finding is, however, subject to the finding given in para 10 hereinabove.

14. These are the reasons for giving the directions as contained in the following operative order passed by this Court on 4.5.2007 :-

OPERATIVE ORDER

(a) The persons who were granted general licence for traders on or after 16.01.2007 shall not be permitted to participate in the elections to the Agriculture Produce Market Committee, Dabhoi for the constituency of traders holding general licences under clause (ii) of sub-section (1) of Section 11 of the APMC Act, 1963.

(b) However, those persons who were granted the general licences for traders prior to 16.01.2007 shall not be prevented from participating in the elections and voting at the said elections on the ground that the licences were granted on the eve of elections or on the ground that the licences were granted to the relatives of the members of the APMC (described as Directors in the Board of Directors of the APMC) or on the ground that the market cess fee was not paid by such persons. The order dated 26.03.2007 of the Authorised Officer and Co-operative Officer (Marketing) in the office of the District Registrar Co-operative Society, Baroda (Annexure-I to Special Civil Application No.9480 of 2007 and Annexure-A to Special Civil Application No.9390 of 2007) shall accordingly stand modified.

(c) The elections to the APMC, Dabhoi shall be conducted for the constituency of traders holding licences on the above basis.

(d) It is clarified that once the elections to the APMC, Dabhoi are held and the results are declared, it will be open to any aggrieved party to challenge the election before the Election Tribunal constituted under the APMC Rules, 1965. It will also be open to the aggrieved party to raise all available contentions including the contention about eligibility to vote by the persons whose names are included in the final list of voters for the constituency of traders holding general licences, as modified by this order, but no contention shall be permitted to be raised which runs counter to the directions given/clarifications made in (a) and (b) hereinabove.

(e) It is also clarified that the observations made by the learned Single Judge of this Court in the order dated 14.03.2007 in Special Civil Application No.6482 of 2007 shall only apply to the licences granted on or after the date on which the Director of Agricultural Marketing and Rural Finance has declared the date of elections to the concerned APMC and not to licences issued prior to such date.

The petitions stand disposed of in terms of the aforesaid directions and clarifications.

15. When this judgment was being pronounced, Mr Pahwa, learned advocate for the petitioner in Special Civil Application No.9390 of 2007 submits that in the election petition to be filed after the elections, it should be open to the persons aggrieved to challenge the election on the ground that the persons who were not actually trading but were merely holding general licence were unlawfully included in the list of voters.

We express no opinion on this question, but if such a contention is available in law to the persons aggrieved, the Tribunal may examine the contention, but we may not be treated to have expressed any opinion either way.

[M.S.SHAH, J.]

[H.B.ANTANI, J.]

zgs/sundar